

MEMORANDUM OF LAW

DATE: March 25, 1994

TO: Councilmember Christine Kehoe

FROM: City Attorney

SUBJECT: Do Corporations Administering Business Improvement Districts ("BID") Have to Comply with the Brown Act?

This Memorandum of Law is in response to your memorandum of March 8, 1994, asking if the selection panel described in the "Competition Guidelines" developed by the Hillcrest Association for the Hillcrest Street Sign Public Art Competition, complies with the Brown Act (codified as California Government Code section 54950 et seq.). The issues raised by this inquiry are as set out below.

Issues

1. Are organizations such as the Hillcrest Association, which administers the Hillcrest BID under contract with The City of San Diego, required to follow the provisions of the Brown Act?

2. If the answer to the preceding question is "yes," are the "Competition Guidelines" developed by the Hillcrest Association in compliance with the Brown Act?

Background

California Streets and Highways Code section 36500 et seq. authorizes the formation of BIDs. Essentially a BID is an assessment district created to assist businesses "located and operating within the business districts of this state's communities" that are "economically disadvantaged, are under-utilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts." See Streets and Highways Code section 36501(a). When a BID is formed, the City Council appoints an "Advisory Body" to make recommendations to the Council on how the assessment revenues should be spent. This group can be an existing advisory body or commission, or be created by the Council. Streets and Highways Code section 36530.

City Council Policy 900-07, "Business Improvement

Districts," sets out the procedure for formation and administration of BIDs. Pursuant to that policy, the City Council contracts with a non-profit organization to run each of its BIDs. The Council Policy states in pertinent part on pages 2 and 3 of 4:

- The Council, as part of the annual confirmation of the various B.I.D. budgets, shall designate an entity, generally a non-profit business or merchant's association (the association), within each district to advise the Council on the district budget, assessments and activities and to carry out the improvement program.
- Selection of the entity shall be based upon its involvement in small business affairs within the district, demonstrated track record and representation of business.
- The association shall be a legally formed California non-profit corporation whose membership shall include all businesses within the district holding current business tax certificates. The association shall elect its board at an annual meeting of the membership called for that purpose and take affirmative action to assure its board reflects the ethnic and business diversity of the community; notice of the meeting shall be provided to all eligible businesses.

The Hillcrest Association is the entity that the City contracts with to administer the Hillcrest BID. As you can see from their By-laws which are attached to this Memorandum of Law, the Hillcrest Association is a non-profit corporation whose membership is made up of the businesses within the BID and that the membership is the body responsible for electing the Board of Directors.

Analysis

The general intent of the Brown Act is set out in Section 54953. It states:

All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

Government Code section 54952 defines the term "legislative body." Section 54952(c) states:

As used in the chapter, "legislative body" means:

- (c) A board, commission, committee, or other multi-member body that governs a private corporation or entity that either:
 - (1) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation or entity.
 - (2) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body by the legislative body of the local agency.

It does not appear that the Hillcrest Association qualifies as a "legislative body" under Section 54952(c). It is created by the businesses participating in the Hillcrest BID, not created by the City Council for the purpose of exercising lawfully delegated authority. Furthermore, the City Council does not appoint one of its members to sit on the Board of the Hillcrest Association.

Conclusion

Corporations, such as the Hillcrest Association that administer BIDs, are not required to follow the provisions of the Brown Act. Thus, the selection panel described in the "Competition Guidelines" need not comply with its requirements.

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By

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Attachment

cc: Jeffery Tom, Council Representative

Marcus Thompson, Office of Small Business

Cristie McGuire, Deputy City Attorney

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